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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,775

12/03/2004

Mark Beckmann

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29177 7590 12/23/2008  
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EXAMINER

GAUTHIER, GERALD

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

12/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,775	<b>Applicant(s)</b> BECKMANN ET AL.	
	<b>Examiner</b> Gerald Gauthier	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim(s) **13** is/are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled “Clarification of ‘Processes’ under 35 U.S.C. 101”). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

**Claims 14-17** are rejected under 35 U.S.C. 101 because they are dependent of claim 13 above.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. **Claims 13-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Grundstrom et al. (US 2005/0015262 A1) in view of Kamath et al. (US 2007/0223383 A1).

Regarding **claim 13**, Grundstrom discloses a method for transmitting data packets [paragraph 0001], the method comprising:

sending a data packet from a sender to a recipient [Imagine that server 101 is sending packetized data to terminal 105 using an acknowledgment-dependent protocol such as TCP or RMT. The packets are sent from the server to the network access point, which in turn passes them to the terminal 105, paragraph 0014];

sending a confirmation message confirming receipt of the data packet from the recipient to the sender [In accordance with the protocol, the terminal acknowledges each received packet, paragraph 0014];

charging for the data packet on receipt of the confirmation message [Embodiments of the present invention make use of acknowledgment-dependent protocols in the charging of users for data reception, paragraph 0012];

sending a non-receipt message from the recipient to the sender if a data packet is at least one of not correctly received and not received [if the packet had not been properly received at the terminal, no acknowledgment would have been dispatched. Accordingly, the server would have noted the lack of acknowledgment and would have retransmitted the packet. The server would have retransmitted the packet until it was properly acknowledged, or until it hit a threshold essentially limiting the allowed number of retransmission tries, paragraph 0012];

sending a status request from the sender to the recipient if a limit value for non-receipt messages received is exceeded [The server would have retransmitted the packet until it was properly acknowledged, or until it hit a threshold essentially limiting the allowed number of retransmission tries, paragraph 0014].

Grundstrom fails to disclose starting a timer for monitoring receipt of the confirmation message.

However, Kamath teaches starting a timer for monitoring receipt of the confirmation message when the data packet is sent [However, because timer 308 triggers message generating module 310 independently of the number of data packets transmitted from the buffer, timer 308 ensures that flow indication messages are sent even if the buffer is empty and no data packet is being transmitted from the buffer, paragraph 0041]; and

storing a number of non-receipt messages received in the sender [storing the data for processing, or, in a streaming media application, to compensate for any delays in the arrival of related data packets, prior to transmission of the data packets to mobile unit 110. It is noted that a base transceiver station such as BTS 116 can include several buffers, for example transmit, retransmit and signaling buffers, and that each type of buffer is configured to receive and process different types of data for transmission to various wireless receiver units, Paragraph 0025].

Therefore, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Grundstrom using the timer for monitoring receipt of the confirmation message as taught by Kamath.

This modification of the invention enables the system to provide a timer for monitoring receipt of the confirmation message because the system would be determine an appropriate time to send feedback.

Regarding **claims 14 and 20**, Grundstrom discloses a method for transmitting data packets, wherein no more data packets are sent if no confirmation message reaches the sender within a time frame started by the timer [paragraph 0014].

Regarding **claims 15 and 21**, Grundstrom discloses a method for transmitting data packets, wherein the data packets are not charged for if no confirmation message reaches the sender within a time frame started by the timer [paragraph 0017].

Regarding **claims 16 and 22**, Grundstrom discloses a method for transmitting data packets, further comprising sending a status request from the sender to the recipient if no confirmation reaches the sender within the time frame started by the timer [paragraph 0020].

Regarding **claims 17 and 23**, Grundstrom discloses a method for transmitting data packets, further comprising resetting the timer on receipt of a confirmation message [paragraph 0014].

Regarding **claim 18**, Grundstrom in combination with Kamath disclose all the limitations of claim 18 as stated in claim 13'rejection above.

Regarding **claim 19**, Grundstrom in combination with Kamath disclose all the limitations of claim 19 as stated in claim 13'rejection above.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald Gauthier whose telephone number is (571) 272-7539. The examiner can normally be reached on 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 2614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gerald Gauthier/  
Primary Examiner, Art Unit 2614

/GG/  
December 23, 2008